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BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

* * * * *

IN THE MATTER OF THE PETITION)	OSPI 251-95
TO TRANSFER TERRITORY FROM HIGH)	
SCHOOL DISTRICT NO 6 (LAME DEER),)	DECISION AND
ROSEBUD COUNTY, MONTANA, TO HIGH)	ORDER
SCHOOL DISTRICT NO. 1 (HARDIN),)	
BIG HORN COUNTY, MONTANA)	
* * * * *)	* * * * *

On November 1, 1994, the Big Horn County Superintendent of Schools received a petition signed by electors residing in Lame Deer High School District No. 6 (hereinafter "the Petitioners") requesting the transfer of territory from Lame Deer High School District to Hardin High School District. On November 7, 1994, the Board of County Commissioners, Big Horn County, notified the County Superintendent that the petition met the criteria of § 20-6-320, MCA (1993).

Lame Deer School District filed a Motion in District Court asking the Court to Stay the Petition for Transfer of Territory until the Court rendered its decision in Cause No. DV 93-142. On December 8, 1994, the District Court denied the Motion for Stay and held that the Petition to Transfer the Territory could be filed with the County Superintendent.

The hearing on the Petition began on January 5, 1995. The County Superintendent granted the Petition transferring the territory from Lame Deer High School District No. 6 (Lame Deer) to Hardin High School District No. 1 (Hardin), on January 28,

1935. Lame Deer appealed the County Superintendent's decision to the State Superintendent in accordance with § 20-6-320(7), MCA. The parties submitted briefs and waived oral argument.

After review of the County Superintendent's record of the hearing and his Findings of Fact, Conclusions of Law and Order granting the transfer of territory from Lame Deer to Hardin, this State Superintendent finds:

O R D E R

The County Superintendent had jurisdiction to hear and decide the Petition for Transfer of Territory. The Superintendent of Public Instruction has jurisdiction to hear this Appeal. The County Superintendent misapprehended the effect of the evidence. The State Superintendent has a definite and firm conviction that a mistake has been made. The decision of the County Superintendent granting the transfer of territory is reversed and the petition is denied.

STANDARD OF REVIEW

This Superintendent's review of a county superintendent's Order is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125.

The Montana Supreme Court adopted the following three-part test to determine whether a finding of fact is clearly erroneous. First, the Court will review the record to see if the findings are supported by substantial evidence on the whole record.

Second, if the findings are supported by substantial evidence, the Court will determine if the trial court has misapprehended the effect of evidence. Third, if substantial evidence exists and the effect of the evidence has not been misapprehended, the Court may still find that "A finding is 'clearly erroneous' when, although there is evidence to support it, a review of the record leaves the court with the definite and firm conviction that a mistake has been committed." State Compensation Mutual Insurance Fund, v. Lee Rost Logging, 252 Mont. 97, 827 P.2d 85, 49 St. Rep. 102 (1992).

Conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990).

DISCUSSION

Territories were transferred from Colstrip High School District No. 19, Rosebud County, Montana, and Hardin High School District No. 17-H, Big Horn County, Montana, to create Lame Deer High School District on November 9, 1993. Both Hardin and Colstrip School Districts opposed the creation of the Lame Deer District and appealed the State Superintendent's Order. That Appeal is pending before the District Court in the Sixteenth Judicial District, Rosebud County, Montana, in Civil Cause No. DV 93-142, In the Matter of the Northern Cheyenne Petition to Create a New High School District. Appellant Lame Deer contends that

the County Superintendent and the State Superintendent lack jurisdiction to hear this Petition and Appeal because jurisdiction rests with the Sixteenth Judicial District.

The State Superintendent concludes that the Sixteenth Judicial District's December 8, 1934, ruling on jurisdiction controls, and rejects Lane Deer's contention that the County Superintendent and the State Superintendent lack jurisdiction to hear the Petition for Transfer and this Appeal. In the Matter of the Northern Cheyenne Petition to Create a New High School District, Cause No. DV 93-142, Sixteenth Judicial District, Memorandum & Opinion (December 8, 1994).

CONSTITUTIONAL ISSUES:

Lane Deer contends that granting this transfer of territory from Lane Deer to Hardin and transferring territory from Lane Deer to Colstrip [In The Matter of The Petition to Transfer Territory From High School District No. 6, (Lane Deer). Rosebud County, Montana to High School District No. 19, (Colstrip), Rosebud County, Montana], OSPI 250-951 violates the Montana and U.S. Constitutions since the territory remaining in the Lane Deer District would be located entirely on the Northern Cheyenne Reservation. As of this date, no Montana court has addressed whether such a situation is a violation of the constitution. Therefore, this State Superintendent leaves the constitutional questions to be decided in a court of competent jurisdiction.

Transfer of Territory:

The taxable property value in the Lane Deer High School District is slightly more than \$2 million. Transfer of territory from Lane Deer to Hardin would reduce the taxable value in Lane Deer by approximately \$325,000. County Superintendent Order, 1/28/95, FOF 11, page 4. The Guaranteed Tax Base Aid (GTBA) provides state general fund revenues to ensure that a local district mill will raise at least as much money for a district's general fund as the average local district mill in the state, up to the district general fund budget EASE level. FOF 35, page 10. See §§ 20-6-306, 307, and 308 MCA. The County Superintendent recognized that GTBA funds are not available outside the district's general fund and stated: "[T]here is no guarantee that the Board of Trustees **of** the Lane Deer High School District will not ask for - and receive - an additional voted levy or a permissive transportation levy. Any additional increase in millage would further enhance the disparity between the affected districts [assume this disparity to be in the number of mills levied]; and would create **a** tax burden under which no taxpayer could reasonably operate." FOF 34, page 10. He concluded that granting the transfer "will have no adverse effect on the residents in the remaining territory of the Lane Deer High School District." Conclusion of Law 8, page 16. Finding of Fact number 44 states: "Any budget planning shortfall in Lane Deer High School District would have a dramatic significant impact on the taxpayers **of** Lane Deer High School District, but this impact is

minimized if they again become taxpayers in Hardin High School District." This finding can be correct only if all property taxpayers are removed from the Lane Deer District. The kids in Lane Deer School District are residents of the "remaining territory" and it is impossible for this State Superintendent to understand how eliminating the District's option of a local mill levy to fund education could avoid having an adverse impact on the "residents in the remaining territory" if funding was insufficient to operate the District.

Granting transfers for the reason that individual taxpayers will pay less in local school taxes encourages taxpayers in districts with low property tax values to petition for a transfer to a district with a higher taxable value. If granted, the individual taxpayers would likely pay less local district property taxes in the "richer" district. District boundaries are intended to provide the stability necessary for adequate planning of facilities and educational programs, and should not be modified on the basis of individual preferences or reducing individual tax burdens.

Grouping people in election units based on similarity of voting patterns is suspect if it results in government sanctioned separation of members of a protected class. Therefore, granting this transfer based on a similar voting pattern is not valid. It is correct that residents of the territory to be transferred are in Big Horn County and that Hardin is the county seat. However, none of the students living in the area to be transferred attend

1 Hardin High School and the inconvenience of voting in Lame Deer in school elections does not outweigh the adverse effect on the residents remaining in the Lame Deer School District.


The Lame Deer School Superintendent admitted at the hearing that he refused to provide certain requested information to residents of the territory seeking a transfer. The State Superintendent does not approve of his action. The law provides specific legal remedies for a school district's denial of access to public records and failure to provide the opportunity for meaningful public participation in the decision making process. However, the Superintendent's action is not a valid reason for changing a district boundary.

The State Superintendent takes this opportunity to call attention to the fact that the Legislature has established two separate standards for certifying a petition requesting a transfer of territory. Generally, the statute requires minimum taxable values for the territory seeking transfer and that remaining in the district. However, if the transfer involves 50,000 acres or more of nontaxable Indian land the general taxable value limitations do not apply.

This State Superintendent believes that granting petitions to transfer territory from one district to another that result in a tax base for any of the effected districts being less than \$2 million is educationally unsound given Montana's reliance on local property taxes. The State Superintendent is of the

definite and firm conviction that the County Superintendent misapprehended the effect of the evidence and made a mistake in granting the petition to transfer territory from Lane Deer District to the Hardin District.

DATED this 19th day of December, 1996.



NANCY KEENAN


LAMED.HAR

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 19th day of November, 1996, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

Richard J. Dolan
GOETZ, MPDDEN & DUNN, P.C.
P.O. Box 428
Bozeman, MT 59771-0428


Larry Martin
FELT, MARTIN & FRAZIER, P.C.
P.O. Box 2558
Billings, MT 59103-2558

Rodney Svec, Superintendent
Hardin Public Schools
Route 1, Box 1001
Hardin, MT 59034-9707

Sharyn Thomas
Rosebud County Superintendent of Schools
P.O. Box 407
Forsyth, MT 59327

Ray S. Phipps, Superintendent
Lame Deer Public Schools
P.O. Box 96
Lame Deer, MT 59043

Gary Hickey
Big Horn County Superintendent of Schools
Drawer H
Hardin, MT 59034



Linda Brandon-Kids
Administrative Officer
Office of Public Instruction